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7
 8 Attorney for Defendant
 9 CRESCENT ELECTRIC SUPPLY COMPANY

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 CLERK U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY

10
 11 UNITED STATES DISTRICT COURT

12 SOUTHERN DISTRICT OF CALIFORNIA
 13 08 CV 0243 DMS CAB

14
 15 ELIZABETH MONTIEL, an individual,) No. _____
 16 Plaintiff,)
 17 vs.) **NOTICE OF REMOVAL OF ACTION**
 18) **UNDER 28 U.S.C. §1441(b)**
 19) **(DIVERSITY)**
 20 CRESCENT ELECTRIC SUPPLY)
 21 COMPANY, a corporation; and)
 22 DOES 1 through 25, inclusive,)
 23 Defendants.)
 24 _____

25 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

26 PLEASE TAKE NOTICE that Defendant CRESCENT ELECTRIC SUPPLY COMPANY,
 27 hereby removes to this Court the state court action described below.

28 1. On January 4, 2008, an action was commenced in the Superior Court of the State of
 California in and for the County of San Diego, North County Regional Center, entitled *Elizabeth
 Montiel vs. Crescent Electric Supply Company, et al.*, as Case No. 37-2008-00088094-CU-OE-NC.
 A copy of the Complaint is attached hereto as Exhibit "A".

29 2. The first date upon which Defendant CRESCENT ELECTRIC SUPPLY
 COMPANY received a copy of said Complaint was January 9, 2008 when Defendant's employee
 (Tracey Standen) received a copy of the said Complaint and a Summons from the said state court.

Crescent - USDC NO REM.doc

Lee A. Morrison
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A copy of the Summons is attached hereto as Exhibit "B". The Summons and Complaint was not served on that date, nor has it ever been actually served.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, because the face of the Complaint alleges employment-related claims giving rise to the following damages:

- (a) “(l)ost wages, salary, employment benefits, and additional amounts of money (plaintiff) would have received” in the absence of the alleged unlawful conduct;
- (b) the loss of “employment-related opportunities” including experience as a lighting project manager;
- (c) “(e)motional and physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension, agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being overwhelmed ...” and
- (d) physical injuries including, but not limited to “headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss.”

Additionally, Plaintiff claims punitive damages.

4. Defendant is informed and believes that Plaintiff ELIZABETH MONTIEL was, and still is, a citizen of the State of California. Defendant CRESCENT ELECTRIC SUPPLY COMPANY was, at the time of the filing of this action, and still is, a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Illinois, and is the only Defendant that has received a Summons and Complaint in this action. (All other Defendants are fictitious defendants designated DOES 1 through 25)

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5. A copy of Defendant's Answer, filed in the Superior Court action, is attached hereto as Exhibit "C".

Dated: February 6, 2008

LEE A. MORRISON
Attorney for Defendant
CRESCENT ELECTRIC SUPPLY
COMPANY

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P. 004

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5
 6 Attorneys for Plaintiff,
 6 Elizabeth Montiel

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 (1)
 CLERK-SUPERIOR COURT
 SAN DIEGO COUNTY, CA

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 8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF SAN DIEGO (NORTH COUNTY)

10
 11 ELIZABETH MONTIEL, an individual,

) CASE NO. 37-2008-00088094-CU-OE-NC

12 Plaintiff,

) COMPLAINT FOR FAILURE TO PROVIDE
) LEAVE PURSUANT TO THE CALIFORNIA
) FAMILY RIGHTS ACT, RETALIATORY
) DISCRIMINATION AND DISCHARGE IN
) VIOLATION OF CALIFORNIA FAMILY
) RIGHTS ACT, RETALIATORY
) DISCRIMINATION AND DISCHARGE IN
) VIOLATION OF PREGNANCY DISABILITY
) LEAVE, SEX DISCRIMINATION, NEGLIGENT
) SUPERVISION AND RETENTION, TORTIOUS
) DISCHARGE IN VIOLATION OF PUBLIC
) POLICY, FAILURE TO ENGAGE IN THE
) INTERACTIVE PROCESS IN GOOD FAITH,
) FAILURE TO ACCOMMODATE CONDITIONS
) RELATED TO PREGNANCY, CHILDBIRTH OR
) RELATED MEDICAL CONDITIONS,
) NEGLIGENT INFILCTION OF EMOTIONAL
) DISTRESS

13 vs.
 14 CRESCENT ELECTRIC SUPPLY COMPANY, a
 15 corporation; and DOES 1 through 25, inclusive,

16 Defendants.

23 Plaintiff Elizabeth Montiel (hereafter "Ms. Montiel") alleges:

24 INTRODUCTORY ALLEGATIONS

25 1. Ms. Montiel is an adult person residing at all times mentioned herein in the County of San
 26 Diego, State of California. The wrongful or illegal acts complained of herein occurred in San Diego
 27 County.

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P. 005

1 2. Defendant Crescent Electric Supply Company (hereafter "CESCO") is a corporation
2 conducting business at 2580 Progress Street, Vista, CA 92083, regularly employs five or more persons,
3 and is subject to suit under the California Fair Employment and Housing Act (hereafter "FEHA").

4 3. Ms. Montiel is ignorant of the true names and capacities of Defendants sued herein as
5 DOES 1 through 25, inclusive, and therefore sues these Defendants by such fictitious names. Ms.
6 Montiel will amend this Complaint to allege their true names and capacities of said Defendants when
7 they are ascertained. Ms. Montiel is informed and believes and thereon alleges that each said fictitiously
8 named Defendant is responsible in some manner for the occurrences herein alleged, and that Ms.
9 Montiel's injuries and damages as herein alleged were proximately caused by their acts. Whenever
10 appearing in this complaint, each and every reference to Defendants, or to any of them, is intended to be
11 and shall be a reference to all the Defendants hereto and each of them, named and unnamed, including all
12 fictitiously-named Defendants, unless said reference is otherwise specifically qualified that the allegation
13 specifically refers only to a particular defendant. Ms. Montiel will seek leave of this Court to amend this
14 Complaint to set forth the true capacity of same Defendant when the same has been ascertained.

15 4. Ms. Montiel is informed and believes and based thereon alleges that the aforementioned
16 DOES are responsible for the acts alleged herein as the agents, employers, representatives, or employees
17 of other named Defendants, and in doing the acts alleged herein were acting within the scope of their
18 agency, employment or representative capacity of said named Defendants, or of each other.

19 5. Ms. Montiel is informed and believes and based thereon alleges that each of the
20 Defendants named herein is the agent, employer, representative or employee of the other named
21 Defendants, and in performing the acts herein alleged was acting within the course and scope of such
22 employment, agency or representative capacity and is therefore responsible for the acts described herein.

23 6. The tortious acts and omissions alleged to have occurred herein were performed by
24 Defendants or supervisors, managerial employees, or agents of Defendants, and said acts were also
25 authorized or ratified by managing agents and/or directors of, or were the policy of, Defendants.

26 7. The acts of Defendants were outrageous, and conducted with malice and with a conscious
27 disregard of Ms. Montiel's rights, so as to justify the imposition of punitive damages in an amount to be
28 shown according to proof at trial.

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P. 006

SPECIFIC FACTUAL ALLEGATIONS

3 8. At the time of the wrongful or illegal acts by Defendants, Ms. Montiel was pregnant with
4 or had just given birth to her daughter, Alyssa. Defendants knew that Ms. Montiel was pregnant or had
5 just given birth and that she was taking care of her very premature baby.

6 9. From on or about August 9, 2004 until on or about April 10, 2007, Defendants employed
7 Ms. Montiel as an "Administrative Assistant" and subsequently a "Lighting Project Manager," who
8 worked with clients to ensure order completion. Ms. Montiel substantially performed her job duties
9 while working for Defendants.

10 10. On or about October 12, 2006, Ms. Montiel was put on bed rest because of her pregnancy.

11 11. On or after November 2, 2006 Defendants mailed to Ms. Montiel a copy of a November 2,
12 2006 memorandum from Defendants to Jeff Hoyt, Branch Manager, which stated that Ms. Montiel had
13 requested a leave of absence. The memorandum also stated that Ms. Montiel qualified for leave of up to
14 12-weeks. Furthermore, Defendant CESCO's "policy allows you [the Branch Manager or Supervisor] to
15 extend a disability leave for a total period of 180 days." A line was checked which stated: "Elizabeth
16 Montiel disability [sic] leave can be extended, if medically necessary, up to a total of 180 days. (Can't
17 exceed 180 days)" and was signed by an unidentified person on the signature line designated "Branch
18 Manager or Supervisor."

19 12. On or about November 15, 2006, Ms. Montiel received a letter from Defendants and
20 signed by Defendant CESCO's Payroll and Insurance Clerk, Kerry Habel, which stated that although Ms.
21 Montiel's position is normally protected for a period of 45-days, her branch manager/supervisor had
22 extended her leave to 180 days if medically necessary. Therefore, according to the letter, Defendants
23 anticipated her returning to her regular work schedule by April 9, 2007. However, the letter continued, if
24 she did not resume working within 180 days, "we will conclude that you have terminated your
25 employment." The letter further stated to "contact Steve Redfearn, Payroll & Benefits Manager, or
26 myself if you have any questions."

27 13. On or about December 21, 2006, Ms. Montiel telephoned Mr. Hoyt informing him that
28 she would be unable to return to work on April 9, 2007 because she was due to give birth on or about

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1 April 27, 2007. Mr. Hoyt told Ms. Montiel that he would call Defendant CESCO's corporate office
2 "himself" and have them provide Ms. Montiel with maternity leave once Ms. Montiel's disability leave
3 ended.

4 14. On or about February 20, 2007, Mr. Hoyt wrote a letter of recommendation for Ms.
5 Montiel which stated: "Elizabeth Montiel has been employed by Crescent Electric Supply since August
6 9, 2004. She is a project specialist in our lighting department. She is a regular employee that works a
7 minimum of 40 hours a week. She is a very competent and valued employee...."

8 15. On February 28, 2007, Ms. Montiel's daughter, Alyssa, was born 8 weeks premature. She
9 weighed 2 pounds, 2 ounces.

10 16. On or about March 4, 2007, Ms. Montiel was discharged from the hospital. Her doctor
11 told her to take 6-8 weeks to rest.

12 17. On or about March 8, 2007, Ms. Montiel's incision became infected.

13 18. On or about March 9, 2007, Ms. Montiel telephoned Mr. Brian Kopp from Human
14 Resources and asked that her daughter be put on her insurance. Ms. Montiel also spoke to Mr. Hoyt and
15 told him that Alyssa was to be kept in the hospital for four weeks. Mr. Hoyt said that he would get a
16 temporary employee to help while Ms. Montiel was out.

17 19. On or about March 27, 2007, Defendants mailed a letter to Ms. Montiel stating that since
18 she is adding her daughter to her insurance, more premiums will need to be deducted from her pay.

19 20. On or about March 31, 2007, Ms. Montiel's daughter, Alyssa, was discharged from the
20 hospital.

21 21. On or about April 6, 2007, Ms. Montiel spoke to Mr. Hoyt about Alyssa's serious health
22 conditions. Mr. Hoyt told her to take as much time off as she needed and that her job would be
23 protected.

24 22. Ms. Montiel's disability ended on or about April 30, 2007. Ms. Montiel was ready and
25 able to return to work but because Mr. Hoyt had told her to take as long as she needed, and because her
26 daughter continued to have a serious medical condition, Ms. Montiel did not return to work that day.

27 23. Without hearing anything from Defendants after her April 6, 2007 telephone conference
28 with Mr. Hoyt, in which he said to take as much time off as she needed and that her job would be

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1 protected, Ms. Montiel learned when she went for a doctor's appointment on or about May 7, 2007, that
2 her insurance had been cancelled.

3 24. On or about May 8, 2007, Defendants mailed a letter to Ms. Montiel stating she owed
4 \$870.30 for six months of medical premiums. The letter also stated that: "[y]our position with Crescent
5 was protected for a period of 180-days while you were absent due to a medical illness or injury. As
6 stated in the letter sent November 15, 2006, your employment with us was protected thru 04/09/07."¹

7 25. On or about May 14, 2007, Defendants mailed a letter to Ms. Montiel regarding COBRA.
8 Because Ms. Montiel was not working, she could not afford to pay for COBRA.

9 26. On August 2, 2007, September 24, 2007, and October 29, 2007, and within one year of the
10 date of the discrimination committed by Defendants, Ms. Montiel filed a charge with the California
11 Department of Fair Employment and Housing (hereinafter "DFEH") against Defendants. DFEH issued
12 to Ms. Montiel right-to-sue letters against Defendants on or about August 6, 2007, September 26, 2007,
13 and October 29, 2007, which were served on Defendants on or about August 9, 2007, October 5, 2007,
14 October 8, 2007, and November 20, 2007.

15 **FIRST CAUSE OF ACTION**

16 **(Failure to Provide Leave Pursuant to the California Family Rights Act)**
(Against All Defendants)

17 27. Ms. Montiel hereby incorporates by reference each and every allegation contained in
18 Paragraphs 1 through 26 above.

19 28. Ms. Montiel was disabled by pregnancy starting October 12, 2006. Pursuant to
20 California's Pregnancy Disability Leave (hereafter "PDL"), she was authorized to be on PDL for up to
21 four months, until February 11, 2007. She then was eligible for a 12-week leave pursuant to the
22 California Family Rights Act (hereafter "CFRA"). Defendants were aware of Ms. Montiel's pregnancy
23 disability and eligibility for CFRA.

24 29. Ms. Montiel's 12-week CFRA leave should have started on February 12, 2007. Thus, the
25 final day of her 12-week CFRA leave would have been May 6, 2007. However, Defendants terminated
26

27 _____
28 ¹Ms. Montiel's actual date of termination is unclear. Documents state that it was either April 9 or 10, 2007.

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1 Ms. Montiel's employment without notice effective April 9, 2007. Therefore, Defendants failed to
2 provide Ms. Montiel with her statutorily authorized 12-weeks of CFRA leave.

3 30. Defendants' actions were unlawful because California Government Code section 12945.2
4 provides that an employer shall grant an eligible employee up to 12 workweeks in any 12 month period,
5 which is separate and distinct from the PDL pursuant to Government Code section 12945. Furthermore,
6 California Code of Regulations, title 2, section 7297.6, entitled "Relationship between CFRA Leave and
7 Pregnancy Disability Leave," provides that the "maximum possible combined leave entitlement for both
8 pregnancy disability leave...and CFRA leave for reason of the birth of the child...is four months and 12
9 workweeks."

10 31. As a proximate result of Defendants' actions against Ms. Montiel, as alleged above, Ms.
11 Montiel has been harmed in that Ms. Montiel has suffered and continues to suffer damages in the form of
12 lost wages, salary, employment benefits, and additional amounts of money Ms. Montiel would have
13 received if Defendants had provided Ms. Montiel 12-weeks of CFRA leave. As a result of such denial
14 and consequent harm, Ms. Montiel has suffered such damages in an amount according to proof.

15 32. As a further proximate result of Defendant's actions against Ms. Montiel, as alleged
16 above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of such
17 employment-related opportunities as experience in the Lighting Project Manager position. As a result of
18 Defendants' actions and consequent harm, Ms. Montiel has suffered such damages in an amount
19 according to proof.

20 33. As a further proximate result of Defendants' actions against Ms. Montiel, as alleged
21 above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from emotional and physical
22 distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension, agitation,
23 panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being overwhelmed,
24 and has been injured in mind and body. Such injuries include, but are not limited to, headaches, high
25 blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such harm, Ms. Montiel
26 has suffered such damages in an amount to be determined according to proof at trial.

27 34. In doing the acts herein alleged, Defendants acted with malice, fraud, or oppression, and
28 with a conscious disregard of Ms. Montiel's rights under the CFRA. Specifically, Defendants

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1 intentionally failed to provide 12-weeks of CFRA leave. As such, Ms. Montiel is entitled to exemplary
2 and punitive damages from Defendants in an amount sufficient to punish Defendants and to deter such
3 wrongful conduct in the future.

4 35. Ms. Montiel is further entitled to attorney's fees and costs of suit pursuant to Government
5 Code section 12965.

6 **SECOND CAUSE OF ACTION**

7 **(Retaliatory Discrimination and Discharge in Violation of California Family Rights Act)**
(Against All Defendants)

8 36. Ms. Montiel hereby incorporates by reference each and every allegation contained in
9 Paragraphs 1 through 35 above.

10 37. Ms. Montiel was eligible for and attempted to take a 12-week CFRA leave from on or
11 about February 12, 2007 through on or after May 6, 2007.

12 38. Defendants retaliated against Ms. Montiel by first assuring her that she would have the
13 leave, subsequently failed to provide 12-weeks of CFRA leave, and then terminated Ms. Montiel's
14 employment because she exercised her rights under the CFRA. Ms. Montiel bases this conclusion on the
15 fact that (1) she informed Defendant CESCO, through its agent Mr. Hoyt, that the time off provided by
16 Defendant CESCO, which was until April 9, 2007, was insufficient; (2) she then began her 12-week
17 CFRA leave on February 12, 2007 which should have lasted until May 6, 2007; (3) on or about March 9,
18 2007, Mr. Hoyt told Ms. Montiel that he would be hiring a temporary employee to assist him until Ms.
19 Montiel returned; (4) on or about April 6, 2007, Mr. Hoyt told Ms. Montiel that her job was protected for
20 as long as she needed; and, (5) however, Defendants unlawfully terminated Ms. Montiel's employment
21 on April 10, 2007, before she completed her CFRA leave.

22 39. Defendants' actions were unlawful because California Government Code section 12945.2
23 provides that an employer shall grant an employee up to 12 workweeks in any 12 month period, and it
24 shall be an unlawful employment practice to discriminate or discharge an individual because of the
25 individual's exercise of the right to use CFRA.

26 40. As a proximate result of Defendants' discriminatory and retaliatory actions against Ms.
27 Montiel, as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues
28 to suffer damages in the form of lost wages, salary, employment benefits, and additional amounts of

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1 money Ms. Montiel would have received if Defendants had not unlawfully retaliated against or
2 terminated Ms. Montiel's employment for use of the CFRA. As a result of such retaliation and
3 consequent harm, Ms. Montiel has suffered such damages in an amount according to proof.

4 41. As a further proximate result of Defendants' retaliatory actions against Ms. Montiel, as
5 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of such
6 employment-related opportunities as experience in the Lighting Project Manager position. As a result of
7 such retaliation and consequent harm, Ms. Montiel has suffered such damages in an amount according to
8 proof.

9 42. As a further proximate result of Defendants' discriminatory and retaliatory actions against
10 Ms. Montiel, as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from
11 emotional and physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety,
12 tension, agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
13 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
14 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
15 retaliation and consequent harm, Ms. Montiel has suffered such damages in an amount to be determined
16 according to proof at trial.

17 43. In doing the acts herein alleged, Defendants acted with malice, fraud, or oppression, and
18 with a conscious disregard of Ms. Montiel's rights under CFRA. Specifically, Defendants intentionally
19 refused to provide CFRA leave and unlawfully terminated her employment in retaliation for exercising
20 her rights under the CFRA. As such, Ms. Montiel is entitled to exemplary and punitive damages from
21 Defendants in an amount sufficient to punish Defendants and to deter such wrongful conduct in the
22 future.

23 44. Ms. Montiel is further entitled to attorney's fees and costs of suit pursuant to Government
24 Code section 12965.

25 **THIRD CAUSE OF ACTION**

26 **(Retaliatory Discrimination and Discharge in Violation of Pregnancy Disability Leave)**
(Against All Defendants)

27 45. Ms. Montiel hereby incorporates by reference each and every allegation contained in
28 Paragraphs 1 through 44 above.

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P. 012

1 46. Ms. Montiel was on PDL from October 12, 2007 until February 11, 2007. Ms. Montiel
2 then attempted to take a 12-week CFRA leave from on or after February 12, 2007 through on or after
3 May 6, 2007.

4 47. Defendants retaliated against Ms. Montiel for her exercise of her rights to PDL by first
5 assuring Ms. Montiel that she would have leave following the PDL, subsequently failing to provide 12-
6 weeks of CFRA leave, and terminating Ms. Montiel's employment. Ms. Montiel bases this conclusion
7 on the fact that (1) she informed Defendant CESCO, through its agent Mr. Hoyt, that the time off
8 provided by Defendant CESCO, which was until April 9, 2007, was insufficient; (2) she began her 12-
9 week CFRA leave on February 12, 2007 which should have lasted until May 6, 2007; (3) on or about
10 March 9, 2007, Mr. Hoyt told Ms. Montiel that he would be hiring a temporary employee to assist him
11 until Ms. Montiel returned; (4) on or about April 6, 2007, Mr. Hoyt told Ms. Montiel that her job was
12 protected for as long as she needed; and, (5) however, Defendants unlawfully terminated Ms. Montiel's
13 employment on April 9, 2007, before she completed her CFRA leave, which began immediately after her
14 PDL.

15 48. Defendants' actions were unlawful because California Government Code section 12940
16 provides that it is an unlawful employment practice to discriminate against an employee because of her
17 pregnancy in compensation or in terms, conditions, or privileges of employment. (Gov. Code, §§
18 12940(a) and 12926(p).) Furthermore, California Code of Regulations, title 2, section 7291.5 provides
19 that it is unlawful for any employer, because of pregnancy of an employee, to retaliate against the
20 employee because of the exercise of her rights to take a PDL.

21 49. As a proximate result of Defendants' discriminatory and retaliatory actions against Ms.
22 Montiel, as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues
23 to suffer damages in the form of lost wages, salary, employment benefits, and additional amounts of
24 money Ms. Montiel would have received if Defendants had provided not unlawfully retaliated against or
25 terminated Ms. Montiel's employment for use of PDL. As a result of such retaliation and consequent
26 harm, Ms. Montiel has suffered such damages in an amount according to proof.

27 50. As a further proximate result of Defendant's retaliatory actions against Ms. Montiel, as
28 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of such

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1 employment-related opportunities as experience in the Lighting Project Manager position. As a result of
2 such retaliation and consequent harm, Ms. Montiel has suffered such damages in an amount according to
3 proof.

4 51. As a further proximate result of Defendants' discriminatory and retaliatory actions against
5 Ms. Montiel, as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from
6 emotional and physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety,
7 tension, agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
8 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
9 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
10 retaliation and consequent harm, Ms. Montiel has suffered such damages in an amount to be determined
11 according to proof at trial.

12 52. In doing the acts herein alleged, Defendants acted with malice, fraud, or oppression, and
13 with a conscious disregard of Ms. Montiel's rights under PDL. Specifically, Defendants intentionally
14 refused to provide CFRA leave and unlawfully terminated her employment in retaliation for exercising
15 her rights under the PDL. As such, Ms. Montiel is entitled to exemplary and punitive damages from
16 Defendants in an amount sufficient to punish Defendants and to deter such wrongful conduct in the
17 future.

18 53. Ms. Montiel is further entitled to attorney's fees and costs of suit pursuant to Government
19 Code section 12965.

20 **FOURTH CAUSE OF ACTION**

21 **(Sex Discrimination)**
(Against All Defendants)

22 54. Ms. Montiel hereby incorporates by reference each and every allegation contained in
23 Paragraphs 1 through 53 above.

24 55. Ms. Montiel was on pregnancy disability leave from October 12, 2007 until February 11,
25 2007. Ms. Montiel attempted to take a 12-week CFRA leave from on or after February 12, 2007 through
26 on or after May 6, 2007.

27 56. Defendants first assured her that she would have the requested time off, then failed to
28 provide the time off, and was terminated from her employment, because of her pregnancy. Ms. Montiel

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1 bases this conclusion on the fact that (1) she informed Defendant CESCO, through its agent Mr. Hoyt,
2 that the time off provided by Defendant CESCO, which was until April 9, 2007, was insufficient; (2) she
3 began her 12-week CFRA leave on February 12, 2007 which should have lasted until May 6, 2007; (3)
4 on or about March 9, 2007, Mr. Hoyt told Ms. Montiel that he would be hiring a temporary employee to
5 assist him until Ms. Montiel returned; (4) on or about April 6, 2007, Mr. Hoyt told Ms. Montiel that her
6 job was protected for as long as she needed; and, (5) however, Defendants unlawfully terminated Ms.
7 Montiel's employment on April 9, 2007, before she completed her CFRA leave, which began
8 immediately after her PDL.

9 57. Defendants' actions were unlawful because pregnancy discrimination is a form of sex
10 discrimination under article 1, section 8 of the California Constitution and FEHA. (*Badiah v. Myers*
11 (1995) 36 Cal.App.4th 1289, 1296 and Cal. Code Regs., tit. 5, § 7291.5.)

12 58. As a proximate result of Defendants' discriminatory actions against Ms. Montiel, as
13 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues to suffer
14 damages in the form of lost wages, salary, employment benefits, and additional amounts of money Ms.
15 Montiel would have received if Defendants had provided not unlawfully discriminated against her based
16 on sex. As a result of such discrimination and consequent harm, Ms. Montiel has suffered such damages
17 in an amount according to proof.

18 59. As a further proximate result of Defendant's discriminatory actions against Ms. Montiel,
19 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of
20 such employment-related opportunities as experience in the Lighting Project Manager position. As a
21 result of such discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount
22 according to proof.

23 60. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
24 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from emotional and
25 physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension,
26 agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
27 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
28 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such

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1 discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount to be
2 determined according to proof at trial.

3 61. In doing the acts herein alleged, Defendants acted with malice, fraud, or oppression, and
4 with a conscious disregard of Ms. Montiel's rights under article 1, section 8, of the California
5 Constitution and FEHA. (See *Badih v. Myers* (1995) 36 Cal.App.4th 1289, 1296 and Cal. Code Regs.,
6 tit. 5, § 7291.5.) Specifically, Defendants intentionally refused to provide CFRA leave and unlawfully
7 terminated her employment because of her pregnancy. As such, Ms. Montiel is entitled to exemplary and
8 punitive damages from Defendants in an amount sufficient to punish Defendants and to deter such
9 wrongful conduct in the future.

10 62. Ms. Montiel is further entitled to attorney's fees and costs of suit pursuant to Government
11 Code section 12965.

12 **FIFTH CAUSE OF ACTION**
13 **(Negligent Supervision and Retention)**
14 **(Against All Defendants)**

15 63. Ms. Montiel hereby incorporates by reference each and every allegation contained in
16 Paragraphs 1 through 62 above.

17 64. Ms. Montiel is informed and believes and thereon alleges that, in doing the acts as
18 heretofore alleged, Defendants knew, or in the exercise of reasonable diligence should have known, that
19 Ms. Montiel's supervisor, Mr. Hoyt, was neither qualified nor able to a) advise Ms. Montiel regarding, or
20 b) grant PDL or CFRA leave to Ms. Montiel. Defendants should have also known that an undue risk to
21 persons such as plaintiff would exist because of Mr. Hoyt's lack of ability to a) advise regarding and b)
22 grant leave under PDL or CFRA unless Defendants adequately trained and supervised Mr. Hoyt in the
23 exercise of the tasks of his employment. As such, Defendants negligently supervised and retained Mr.
24 Hoyt.

25 65. Notwithstanding the knowledge that Mr. Hoyt was neither qualified nor able to a) advise
26 Ms. Montiel regarding, or b) grant PDL or CFRA leave to Ms. Montiel, Defendants did not adequately
27 train or supervise Mr. Hoyt in his performance of advising regarding or granting PDL or CFRA leave.

28 66. Despite this advance knowledge, Defendants allowed Mr. Hoyt to a) advise employees
regarding or b) grant PDL or CFRA leave in conscious disregard of the rights of others.

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1 67. Defendants had a duty of care pursuant to Defendants' policies and the law to ensure that
2 Mr. Hoyt did not violate employees' rights under the PDL and CFRA. Part of Defendants' duty included
3 the supervision of employees and compliance with these laws.

4 68. Nevertheless, Defendants breached that duty by failing to properly supervise the
5 implementation of these laws and by allowing supervisor employees such as Mr. Hoyt to participate in
6 the violation of these laws.

7 69. The failure of Defendants to adequately train and supervise Mr. Hoyt was the proximate
8 cause of Ms. Montiel's injury in that Ms. Montiel relied on Mr. Hoyt's statements that her job with
9 Defendants was "safe" and that she could take as much time as she needed.

10 70. As a proximate result of Defendants' negligent supervision of Mr. Hoyt, as alleged above,
11 Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues to suffer damages in the
12 form of lost wages, salary, employment benefits, and additional amounts of money Ms. Montiel would
13 have received if Defendants had not negligently supervised and retained Mr. Hoyt. As a result of such
14 negligent supervision and retention, Ms. Montiel has suffered such damages in an amount according to
15 proof.

16 71. As a further proximate result of Defendants' negligent supervision and retention, as
17 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of such
18 employment-related opportunities as experience in the Lighting Project Manager position. As a result of
19 such negligent supervision and retention, Ms. Montiel has suffered such damages in an amount according
20 to proof.

21 72. As a further proximate result of Defendants' negligent supervision and retention, as
22 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from emotional and
23 physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension,
24 agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
25 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
26 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
27 negligent supervision and retention, Ms. Montiel has suffered such damages in an amount to be
28 determined according to proof at trial.

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1 73. As a result of Defendants' conscious disregard of Ms. Montiel's rights, Ms. Montiel is
2 entitled to exemplary and punitive damages from Defendants in an amount sufficient to punish
3 Defendants and to deter such wrongful conduct in the future.

4 74. Ms. Montiel is further entitled to attorney's fees and costs of suit, in an amount the Court
5 determines to be reasonable as authorized by the provisions of Code of Civil Procedure section 1021.5,
6 as well as other applicable provisions.

SIXTH CAUSE OF ACTION
(Tortious Discharge In Violation of Public Policy)
(Against All Defendants)

9 75. Ms. Montiel hereby incorporates by reference each and every allegation contained in
10 Paragraphs 1 through 74 of her Complaint as though fully set forth herein.

11 76. On or about August 9, 2004, Ms. Montiel was hired by Defendant CESCO and was
12 eventually promoted to Lighting Project Manager.

13 77. On or about October 12, 2006 Ms. Montiel was put on PDL by her doctor because she was
14 pregnant. Defendants subsequently informed her that she would be required to return to work April 9,
15 2007. Ms. Montiel notified Defendant CESCO, through its agent Mr. Hoyt, that she needed more time,
16 which Mr. Hoyt approved. Ms. Montiel subsequently began her CFRA leave, for which she was eligible.
17 However, Defendants unlawfully terminated Ms. Montiel's employment because she was pregnant, and
18 took PDL and CFRA leave.

19 78. Defendants' actions were unlawful because unlawful discrimination in violation of the
20 California Constitution, the FEHA, the PDL, and CFRA are violations of public policy.

21 79. As a proximate result of Plaintiff's conduct as described in Paragraph 77 above, and in
22 violation of public policy as set forth in Paragraph 78, above, Defendants terminated Ms. Montiel's
23 employment on April 9, 2007 because of pregnancy and her exercise of her rights under PDL and CFRA.

24 80. As a proximate result of Defendants' discriminatory actions against Ms. Montiel, as
25 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues to suffer
26 damages in the form of lost wages, salary, employment benefits, and additional amounts of money Ms.
27 Montiel would have received if Ms. Montiel's employment had not been unlawfully terminated by

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1 Defendants. As a result of such discrimination and consequent harm, Ms. Montiel has suffered such
2 damages in an amount according to proof.

3 81. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
4 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of
5 such employment-related opportunities as experience in the Lighting Project Manager position. As a
6 result of such discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount
7 according to proof.

8 82. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
9 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from emotional and
10 physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension,
11 agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
12 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
13 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
14 discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount to be
15 determined according to proof at trial.

16 83. In doing the acts set forth above, Defendants knew that Ms. Montiel was pregnant and had
17 exercised her rights under the CFRA and PDL. Notwithstanding this knowledge, Defendants despicably
18 subjected Ms. Montiel to cruel and unjust hardship in conscious disregard of Ms. Montiel's rights by, for
19 example, terminating Ms. Montiel's employment after almost three years of loyal service.

20 84. Defendants authorized and ratified the conduct of Ms. Habel by instructing her to send the
21 May 8, 2007 letter to Ms. Montiel pursuant to Defendants' policy. The ratification was by, among
22 others, Mr. Redfearn, Payroll & Benefits Manager of Defendant CESCO. Defendants' conduct warrants
23 the assessment of punitive damages.

24 85. Ms. Montiel is further entitled to attorney's fees and costs of suit.

25 **SEVENTH CAUSE OF ACTION**
26 **(Failure to Engage in the Interactive Process in Good Faith)**
27 **(Against All Defendants)**

28 86. Ms. Montiel hereby incorporates by reference each and every allegation contained in
Paragraphs 1 through 85 above.

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1 87. From on or about December 21, 2006, Defendants intentionally failed to engage in the
2 interactive process in good faith. On or about December 21, 2006, Ms. Montiel requested a reasonable
3 accommodation of additional time off after her 180 days of disability, which ended on April 9, 2007,
4 because she was due to give birth on April 27, 2007. Mr. Hoyt told Ms. Montiel that he would call
5 Defendants himself to arrange additional leave. On or about March 9, 2007, Ms. Montiel again spoke to
6 Mr. Hoyt, and told him that Alyssa was to be kept in the hospital for four weeks. Mr. Hoyt said that he
7 would hire a temporary employee to help while Ms. Montiel was out, which would have been a
8 reasonable accommodation. On or about April 6, 2007, Ms. Montiel told Mr. Hoyt about Alyssa's
9 various serious health conditions by telephone. Mr. Hoyt told Ms. Montiel that her job will be protected
10 and to take as much time off as she needed, which would have been a reasonable accommodation.
11 However, Defendants unlawfully terminated Ms. Montiel's CFRA leave and employment on April 9,
12 2007, without notice.

13 88. At all times mentioned herein, Ms. Montiel was willing and able to perform the essential
14 job duties of her position if reasonable accommodations had been made by Defendants. At no time
15 would the performance of the essential job duties of the Lighting Project Manager position, with a
16 reasonable accommodation for Ms. Montiel's physical disabilities, have been a danger to Ms. Montiel's
17 or any other person's health or safety, nor would it have created an undue hardship to the operation of
18 Defendant CESCO's business.

19 89. Defendants intentionally failed to engage in the good faith interactive process. Ms.
20 Montiel bases this conclusion on the fact that in spite her December 21, 2006, March 9, 2007, and April
21 6, 2007, requests for reasonable accommodations of time off after April 9, 2007, and approval of same by
22 Defendant CESCO, through its agent Mr. Hoyt; Defendants unlawfully terminated Ms. Montiel's
23 employment, without notice, on April 9, 2007.

24 90. Government Code section 12940(n) prohibits an employer from failing to engage in the
25 interactive process in good faith with the employee to determine reasonable accommodations, if any, in
26 response to a request for a reasonable accommodation by an employee with known physical disabilities.
27 Government Code section 12945 forbids an employer from refusing "to provide [a] reasonable
28 accommodation for an employee for conditions related to pregnancy, childbirth, or related medical

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P. UZU

1 conditions, if she so requests, with the advice of her health care provider." Defendants' discriminatory
2 actions against Ms. Montiel, as alleged above, constitute a violation of Government Code section
3 12940(n).

4 91. As a proximate result of Defendants' discriminatory actions against Ms. Montiel, as
5 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues to suffer
6 damages in the form of lost wages, salary, employment benefits, and additional amounts of money Ms.
7 Montiel would have received if Defendants' had engaged in the interactive process in good faith with
8 Ms. Montiel. As a result of such discrimination and consequent harm, Ms. Montiel has suffered such
9 damages in an amount according to proof.

10 92. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
11 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of
12 such employment-related opportunities as experience in the Lighting Project Manager position. As a
13 result of such discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount
14 according to proof.

15 93. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
16 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from emotional and
17 physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension,
18 agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
19 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
20 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
21 discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount to be
22 determined according to proof at trial.

23 94. In doing the acts herein alleged, Defendants acted with malice, fraud, or oppression, and
24 with a conscious disregard of Ms. Montiel's rights under FEHA. Specifically, Defendants intentionally
25 refused to engage in the interactive process in good faith in spite of being able to provide Ms. Montiel
26 reasonable accommodations. As such, Ms. Montiel is entitled to exemplary and punitive damages from
27 Defendants in an amount sufficient to punish Defendants and to deter such wrongful conduct in the
28 future.

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95. Ms. Montiel is further entitled to attorney's fees and costs of suit pursuant to Government Code section 12965.

EIGHTH CAUSE OF ACTION

(Failure to Accommodate Conditions Related to Pregnancy, Childbirth, or Related Medical Conditions)

(Against All Defendants)

96. Ms. Montiel hereby incorporates by reference each and every allegation contained in Paragraphs 1 through 95 above.

8 97. From on or about April 9, 2007, Defendants intentionally failed to reasonably
9 accommodate Ms. Montiel's conditions related to pregnancy, childbirth, or related medical conditions.
10 Defendants responded to Ms. Montiel's December 21, 2007, March 9, 2007, and April 6, 2007 request
11 for unpaid leave by approving her requests and subsequently terminating her leave and employment on
12 April 9, 2007.

13 98. At all times mentioned herein, Ms. Montiel was willing and able to perform the essential
14 job duties of her position if reasonable accommodations had been made by Defendants. At no time
15 would the performance of the essential job duties of the Lighting Project Manager position, with a
16 reasonable accommodation for Ms. Montiel's conditions related to pregnancy, childbirth, or related
17 medical conditions, have been a danger to Ms. Montiel's or any other person's health or safety, nor
18 would it have created an undue hardship to the operation of Defendants' business.

19 99. Defendants intentionally failed to provide Ms. Montiel reasonable accommodations. Ms.
20 Montiel bases this conclusion on the fact that in spite of her December 21, 2006, March 9, 2007, and
21 April 6, 2007, requests for reasonable accommodations of time off after April 9, 2007, and approval of
22 same by Defendant CESCO, through its agent Mr. Hoyt, Defendants unlawfully terminated Ms.
23 Montiel's leave and employment, without notice, on April 9, 2007.

24 100. Government Code section 12945 forbids an employer from refusing "to provide [a]
25 reasonable accommodation for an employee for conditions related to pregnancy, childbirth, or related
26 medical conditions, if she so requests, with the advice of her health care provider." Defendants'
27 discriminatory actions against Ms. Montiel, as alleged above, constitute a violation of Government Code
28 section 12945.

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1 101. As a proximate result of Defendants' discriminatory actions against Ms. Montiel, as
2 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered and continues to suffer
3 damages in the form of lost wages, salary, employment benefits, and additional amounts of money Ms.
4 Montiel would have received if Defendants had provided a reasonable accommodation for her conditions
5 which were related to pregnancy, childbirth, or related medical conditions. As a result of such
6 discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount according to
7 proof.

8 102. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
9 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered the intangible loss of
10 such employment-related opportunities as experience in the Lighting Project Manager position. As a
11 result of such discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount
12 according to proof.

13 103. As a further proximate result of Defendants' discriminatory actions against Ms. Montiel,
14 as alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from emotional and
15 physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension,
16 agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
17 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
18 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
19 discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount to be
20 determined according to proof at trial.

21 104. In doing the acts herein alleged, Defendants acted with malice, fraud, or oppression, and
22 with a conscious disregard of Ms. Montiel's rights under FEHA. Specifically, Defendants intentionally
23 refused to provide Ms. Montiel with a reasonable accommodation of limited extra time off in spite of
24 being able to provide Ms. Montiel reasonable accommodations for her conditions which were related to
25 pregnancy, childbirth, or related medical conditions. As such, Ms. Montiel is entitled to exemplary and
26 punitive damages from Defendants in an amount sufficient to punish Defendants and to deter such
27 wrongful conduct in the future.

28 ////

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P. 023

1 105. Ms. Montiel is further entitled to attorney's fees and costs of suit pursuant to Government
2 Code section 12965.

3 **NINTH CAUSE OF ACTION**

4 (Negligent Infliction of Emotional Distress)
(Against All Defendants)

5 106. Ms. Montiel hereby incorporates by reference each and every allegation contained in
6 Paragraphs 1 through 105 as though fully set forth herein.

7 107. Defendants had a duty, as employers, to act with due care toward Ms. Montiel by not
8 unlawfully terminating her employment because of her pregnancy and exercise of her rights under the
9 PDL and CFRA.

10 108. Defendants knew or should have known that Defendants' failure to exercise due care in
11 the acts referred to in Paragraph 107 above would cause Ms. Montiel severe emotional distress.

12 109. Defendants breached their duty owed to Ms. Montiel by committing the acts alleged
13 herein. These acts included initially approving Ms. Montiel's leave pursuant to the CFRA, and because
14 of her pregnancy and in retaliation for her use of CFRA and PDL leave, subsequently unlawfully
15 revoking her CFRA leave, and unlawfully terminating her employment.

16 110. As a proximate result of Defendants' discriminatory actions against Ms. Montiel, as
17 alleged above, Ms. Montiel has been harmed in that Ms. Montiel has suffered from severe emotional and
18 physical distress including, but not limited to, sleeplessness, worry, stress, crying, anxiety, tension,
19 agitation, panic, depression, loneliness, feelings of helplessness, frustration, fear, isolation, being
20 overwhelmed, and has been injured in mind and body. Such injuries include, but are not limited to,
21 headaches, high blood pressure, nausea, diarrhea, heart palpitations and hair loss. As a result of such
22 discrimination and consequent harm, Ms. Montiel has suffered such damages in an amount to be
23 determined according to proof at trial.

24 **MS. MONTIEL THEREFORE PRAYS FOR JUDGMENT**
25 **AGAINST DEFENDANTS AS FOLLOWS:**

26 WHEREFORE, Ms. Montiel prays for judgment against Defendants, and each of them, as
27 follows:
28

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- 1 1. For compensatory and incidental damages, including, but not limited to, emotional
2 distress, loss of wages, employee benefits, loss of future earning capacity, and other special and general
3 damages in an amount to be shown at trial;
- 4 2. For an award of exemplary and punitive damages sufficient to punish the Defendants and
5 deter such future conduct in an amount commensurate with Defendant's ability to pay, which will be
6 shown at trial;
- 7 3. For an award of pre-judgment interest at the legal rate;
- 8 4. For an award of attorney's fees and costs, incurred herein pursuant to California
9 Government Code section 12965, California Code of Civil Procedure 1021.5 and other applicable
10 provisions;
- 11 5. For costs of suit incurred herein; and,
- 12 6. For such further relief in law or in equity, as this court deems just and proper.

13 | DATED: January 3, 2008

Respectfully submitted,

LAW FIRM OF ZAMPI AND ASSOCIATES

16 By: Gerald B. Determan
GERALD B. DETERMAN

By: Christopher B. Desaulniers
CHRISTOPHER B. DESAULNIERS
Attorneys for Plaintiff,
Elizabeth Montiel

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P. 003

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

CRESCENT ELECTRIC SUPPLY COMPANY, a corporation; and
DOES 1 through 25, inclusive

NORTH COUNTY DIVISION

2008 JAN -4 PM 4:17

(1)
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUM-100

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ELIZABETH MONTIEL, an individual

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al darse que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/seithelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, píld el secretario de la corte que le dé un formulario de extensión de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/seithelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
North County Superior Court
325 S. Melrose Dr.
Vista, CA 92083

Case Number:
(Número del Caso): 2008-0088894-CU-DE-NO

North County Vista Regional Center

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Joseph P. Zampi, Esq. #110168 (619) 231-9920 (619) 231-8529
Gerald B. Determan, Esq. #134905; Christopher B. DeSaulniers, Esq. #213934
Law Firm of Zampi and Associates
225 Broadway, Suite 1450, San Diego, CA 92101

DATE: JAN - 4 2008 Clerk, by R. GOMEZ, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): a corporation

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservated)
 CCP 416.40 (association or partnership) CCP 416.80 (authorized person)
 other (specify):

4. by personal delivery on (date):

1 LEE A. MORRISON (SBN #95676)
 2 Union Bank of California Building
 3 530 "B" Street, Suite 1410
 4 San Diego, CA 92101-4479
 Tel: (619) 235-2133
 Fax: (619) 235-4508

FILED
 NORTH COUNTY DIVISION
 2008 FEB -4 PM 2:59

CLERK-SUPERIOR COURT
 SAN DIEGO COUNTY, CA

6 Attorney for Defendant
 7 CRESCENT ELECTRIC SUPPLY COMPANY

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

11 NORTH COUNTY REGIONAL CENTER

13 ELIZABETH MONTIEL, an individual,) Case No. 37-2008-00088094-CU-OE-NC
 14 Plaintiff,)
 15) ANSWER OF DEFENDANT
 16 vs.) CRESCENT ELECTRIC SUPPLY
 17) COMPANY
 18 CRESCENT ELECTRIC SUPPLY)
 COMPANY, a corporation; and) (Complaint filed: 1/4/08)
 19 DOES 1 through 25, inclusive,)
 20 Defendants.) DEPT: N-30
) JUDGE: Hon. Thomas P. Nugent
)

21 Defendant CRESCENT ELECTRIC SUPPLY COMPANY, severing itself from all other
 22 Defendants, hereby answers the unverified Complaint as follows:

23 Under the provisions of Section 431.30 of the California Code of Civil Procedure, this
 24 answering Defendant denies generally and specifically each, every and all of the allegations
 25 contained in the Complaint, and the whole thereof, including each and every purported Cause of
 26 Action contained therein, and denies that the Plaintiff has or will sustain damages in the sum or
 27 sums alleged or in any other sums or sums at all.

28 ///

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(FAILURE TO STATE SUFFICIENT FACTS)

Each cause of action sought to be alleged in the Complaint fails to state facts sufficient to constitute a cause of action or causes of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE (FAILURE TO MITIGATE)

This answering Defendant alleges that Plaintiff has failed, neglected and refused to mitigate the alleged injuries and damages.

THIRD AFFIRMATIVE DEFENSE (LATCHES)

This answering Defendant is informed and believes and thereon alleges that Plaintiff has inexcusably delayed in proceeding with her claim despite her contention that this answering Defendant is liable to said Plaintiff. The Plaintiff's inexcusable delay has prejudiced this answering Defendant's position and Plaintiff's claim against this answering Defendant is, therefore, barred by the doctrine of latches.

FOURTH AFFIRMATIVE DEFENSE
(STATUTES OF LIMITATION)

This answering Defendant is informed and believes and thereon alleges that each of the alleged causes of action are barred by the applicable statutes of limitation.

FIFTH AFFIRMATIVE DEFENSE
(WAIVER)

This answering Defendant believes that Plaintiff has, by her conduct, waived her rights to bring the alleged causes of action against this answering Defendant.

SIXTH AFFIRMATIVE DEFENSE
(FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES)

This answering Defendant is informed and believes that Plaintiff is barred from prosecuting this action, for her failure to exhaust available administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE
(GOOD FAITH)

This answering Defendant is informed and believes, and thereon alleges, that Plaintiff is precluded from obtaining liquidated damages or punitive damages, for the reason that all actions undertaken by this answering Defendant were taken in “good faith”.

EIGHTH AFFIRMATIVE DEFENSE
(FAILURE TO STATE FACTS RE PUNITIVE DAMAGES)

This answering Defendant alleges that the Complaint, and each alleged cause of action contained therein, fails to state facts sufficient to constitute any claim for punitive or exemplary damages against this answering Defendant.

NINTH AFFIRMATIVE DEFENSE
(ESTOPPEL)

This answering Defendant is informed and believes, and thereon alleges, that Plaintiff is estopped from obtaining the relief sought by her Complaint by virtue of her acts and conduct in connection with the matters alleged in the Complaint.

PRAYER

WHEREFORE, Defendant requests judgment as follows:

1. That Plaintiff take nothing by the Complaint;
2. That Defendant recovers from Plaintiff costs in an amount to be proven at trial; and
3. That the Court orders such further relief as it deems in the interest of justice.

Dated: February 4, 2008

LEE A. MORRISON
Attorney for Defendant
CRESCENT ELECTRIC SUPPLY
COMPANY

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ELIZABETH MONTIEL, an individual,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) 619/231-9920
Law Firm of Zampi & Associates
225 Broadway, #1450, San Diego, CA

DEFENDANTS

CRESCENT ELECTRIC SUPPLY COMPANY
a corporation, et al.County of Residence of First Listed Defendant Cook County Ill.

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.Attorneys (If Known) LEE A. MORRISON 619/235-2133
530 "B" Street, Suite 1410
San Diego, CA 92101-4479

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 6
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 750 Motions to Vacate Sentence	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 760 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 510 Motions to Vacate Habeas Corpus:		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 530 General		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Section 1441(b)

Brief description of cause:

Alleged wrongful termination due to employee pregnancy

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMANDS not stated

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/7/08

FOR OFFICE USE ONLY

RECEIPT # 147361 AMOUNT \$350 2/7/08 BY JUDGE

APPLYING IFFP

JUDGE

MAG. JUDGE

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

147361 - BH

**February 07, 2008
11:35:20**

Civ Fil Non-Pris
USAO #: 08CV0243 CIVIL FILING
Judge.: DANA M SABRAW
Amount.: \$350.00 CK
Check#: BC# 14092

Total-> \$350.00

**FROM: MONTIEL V. CRESCENT ELECTRIC
CIVIL FILING**